

REMARKS

Applicant has thoroughly considered the Examiner's remarks, and the application has been amended in light thereof. Claims 1-37, 47-50 and 55-58 are presented in the application for further examination. Claims 18 and 28 have been amended by this Amendment A. Reconsideration of the application claims as amended and in view of the following remarks is respectfully requested. The following remarks will follow the sequence of the Office action (the numerals at the beginning of the paragraphs below correspond to the numbered paragraphs of the Office action).

Response to the Restriction Requirement

1.-4. On August 28, 2003, Applicant provisionally elected the claims of Invention I (claims 1-37, 47-50 and 55-58), without traverse. Applicant affirms the election of Invention I (claims 1-37, 47-50 and 55-58) in this response to the Office action. Accordingly, the claims of Invention II (claims 38-46 and 51-54) have been canceled in accordance with Applicant's election of the claims of Invention I. Applicant expressly reserves the right to file divisional applications directed to these claims.

Response to Rejections based on 35 U.S.C. § 102

5.-6. Claims 1-37, 47-50 and 55-58 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bergsman et al. (U.S. Patent No. 5,568,539). Bergsman et al. disclose an interactive telephonic message delivery method and apparatus for providing an intended recipient of a voice message with options as to when he or she will hear the message. In particular, Bergsman et al. disclose an interactive telephonic message delivery system that initially contacts the intended recipient of the voice message at an initial appointed date and time. The intended recipient of the voice message is then directed to indicate that he or she has a touch-tone telephone by generating a recognizable tone through pressing any one of the telephone touch-tone buttons. If the intended recipient indicates that he or she possesses a touch-tone telephone, the intended recipient is provided with a number of options as to when he or she wishes to receive the voice message. The intended recipient selects a particular option by

pressing the telephone button associated with the particular option. (*Bergsman et al.*, col. 1 line 59 to col. 2 line 22).

It should be noted that the Bergsman invention "requires the recipient to be able to control his or her experience by way of generating recognizable tones." In other words, the intended recipient as taught by Bergsman et al. ***must use a touch-tone telephone in order to select a particular option as to when to receive the voice message.*** (*Bergsman et al.*, col. 3, lines 34-42).

Regarding claim 1, Applicant submits that Bergsman et al. do not disclose each and every recited element. First, claim 1 recites "support[ing] voice messaging between . . . individuals accessible through ***computer devices*** located on the network." As discussed, Bergsman et al. require that the intended recipient of the voice message use a ***touch-tone telephone*** to select an option as to when to receive the voice message. The entire subject matter of the Bergsman patent is an interactive ***telephonic*** message delivery method and apparatus in which the only device that the intended recipient may use to receive the voice message is a telephone device (which is further required by Bergsman et al. to be a touch-tone telephone). Bergsman et al.'s requirement to use a touch-tone telephone is distinguishable from claim 1, in which an intended recipient may use a telephone device or a ***computer device*** to receive delivery or notification of a voice message. Bergsman et al. fail to even remotely mention that the intended recipient may use a computer device in lieu or in conjunction with a telephone device in order to receive the voice message. It is further noted that Bergsman et al., at column 8, lines 3-42, do not disclose the computer device of claim 1. The system disclosed by Bergsman et al. is a message storage system that stores a voice message received from an end-user for delivering the voice message to another end-user at a later time. The message storage system of Bergsman et al. is not an end-user computer device of claim 1 (e.g., a personal computer, handheld computer, personal digital assistant, etc.) intended for the end-user to receive or send a voice message.

Claim 1 also recites a ***"user profile specifying one or more communication devices located on the network by which such intended recipient should receive delivery or notification of voice messages directed to such intended recipient"*** and ***"delivering at least one of the received voice messages to its intended recipient . . . using a telephone device specified in the user profile of the intended recipient . . . and a computer device specified in the user profile of the intended recipient."*** Applicant submits that Bergsman et al. fail to disclose such a user profile specifying a communication device to receive delivery or notification of the voice

message. In the Bergsman reference, even though the intended recipient may specify as to when he or she wishes to receive the voice message, nevertheless, the intended recipient may not specify a communication device through which he or she may receive the voice message. In fact, the only device that the intended recipient of the Bergsman reference may use to receive the voice message is a touch-tone telephone.

The Examiner asserts that Bergsman et al., at column 3, lines 13-22, suggest the user profile of claim 1. However, Bergsman et al., at column 3, lines 13-22 only disclose a call record specifying a date and time that a particular voice message should be sent to its intended recipient. Accordingly, Bergsman et al. fail to teach or suggest each and every element of claim 1. Furthermore, Bergsman et al. teach away from claim 1 by requiring the intended recipient to use a touch-tone telephone to select an option as to when to receive the voice message. Thus, claim 1 is believed to be allowable over Bergsman et al.

Claims 2-17 depend from claim 1. Therefore, claims 2-17 are believed to be allowable for at least the same reasons as claim 1.

Regarding claim 18, the Examiner contends that Bergsman et al., at column 3, lines 3-18 and FIG. 3, disclose a system that includes "a processor, a memory device, computer instructions stored in the memory device, a microphone, and an interface to a communications network." Applicant submits that the system of Bergsman et al. is distinguishable from the apparatus recited in claim 18. The system of Bergsman et al. is a message storage system that stores a voice message for delivering the voice message to its intended recipient at a later time. In contrast, claim 18 recites an apparatus that is intended for end-users to record and send an audio message.

Claim 18 has been amended to recite that the apparatus records and sends audio messages to "***an interactive voice response (IVR) system coupled to a communications network for delivery to one or more remote devices***" and that "the audio file may be transmitted through the communications network to the IVR system or the computer server for delivery to said one or more remote devices." As a result, the message storage system of Bergsman et al. is distinguishable from the apparatus of claim 18 in that the message storage system of Bergsman et al. does not record and send audio messages to an IVR system. Instead, the message storage system of Bergsman et al. only delivers audio messages to a touch-tone telephone. It is also noted that Bergsman et al. do not mention that the touch-tone telephone may record audio

messages in an audio file. Accordingly, Bergsman et al. fail to teach or suggest each and every element of claim 18. Thus, claim 18 should be allowable over Bergsman et al.

Claims 19-27 depend from claim 18 and are believed to be allowable for at least the same reasons as claim 18.

Claim 28, as amended, now recites that the method records and sends "*an audio message to an interactive voice response (IVR) system coupled to a communications network for delivery to one or more remote devices using a computer device*" and that the audio file is sent to the network interface "for delivery to said IVR system through the communications network." Claim 28, as amended, clarifies that the computer device is an end-user device, which is distinguishable from the message storage system disclosed by Bergsman et al. Accordingly, Bergsman et al. fail to teach or suggest each and every element of claim 28, and claim 28 should be allowable over Bergsman et al.

Claims 29-37 depend from claim 28. Thus, these claims should be allowable based on their dependency from an allowable independent claim.

Regarding claim 47, the Examiner argues that Bergsman et al., at column 3, lines 13-33, disclose sending an "*electronic message including a hyperlink to the stored voice message.*" As discussed, Bergsman et al. require the intended recipient to use a touch-tone telephone to select an option as to when to receive the voice message. In other words, the voice message as taught by Bergsman et al. is sent to the intended recipient in analog form. Thus, not only Bergsman et al. fail to suggest sending electronic messages to the intended recipient, they also teach away from such sending of electronic messages. Furthermore, Bergsman et al. also fail to disclose hyperlinks included in electronic messages. In fact, the messages of the Bergsman reference are all in audio format and thus cannot include hyperlinks. Moreover, Bergsman et al., at column 3, lines 13-33, suggest nothing more than examining a call record to determine what date and time to send a particular voice message. Accordingly, Bergsman et al. fail to teach or suggest each and every element of claim 47. Bergsman et al. further teach away from claim 47 by requiring the intended recipient to use a touch-tone telephone. Thus, claim 47 is believed to be allowable over Bergsman et al.

Claims 48-50 depend from claim 47. Thus, claims 48-50 should be allowable based on their dependency from an allowable independent claim.

Regarding claim 55, Applicant submit that Bergsman et al. fail to disclose the elements of "*receiving information from a first device . . . indicating the user's desire to record and send*

an audio message," "contacting the user via a second device," and "receiving the audio message from the user via the second device." The subject matter of the Bergsman patent is to provide the intended recipient of the voice message options as to when he or she wishes to receive the voice message. Bergsman et al. do not relate to how a sender initiates a voice message. As one particular exemplary embodiment of claim 55, the user (sender) may use a computer device to indicate to a computer server that he or she wishes to record an audio message. An IVR system may then contact the sender via a telephone device. The sender may then record the audio message via the telephone device. Applicant submits that Bergsman et al. fail to disclose such elements of receiving information from a first device and receiving the audio message from a second device. Accordingly, Bergsman et al. fail to teach or suggest each and every element of claim 55, and claim 55 should be allowable over Bergsman et al.

Claims 56-58 depend from claim 55. Thus, claims 56-58 should be allowable for at least the same reasons that claim 55 is allowable.

Conclusion

7. The other references made of record and not relied upon are cumulative and no more relevant than the reference already applied by the Examiner. Thus, the amended claims distinguish over the prior art and are patentable.

8. It is felt that a full and complete response has been made to the Office action and, as such, places the application in condition for allowance. Such allowance is hereby respectfully requested. If the Examiner feels, for any reason, that a personal interview will expedite the prosecution of this application, he is invited to telephone the undersigned.

Any required fees or overpayments should be applied to Deposit Account No. 19-1345.

Respectfully submitted,



Robert M. Bain, Reg. No. 36,736
SENNIGER, POWERS, LEAVITT & ROEDEL
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
314/231-5400